IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

Crl.Rev.Pet.No. 325 of 1998

CRA.141/1992 of ADDL.SESSIONS COURT, KOTTAYAM
CC.575/1989 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY
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REVN. PETITIONER:

GP[PIKUTTAN NAIR, SON OF RAGHAVAN NAIR
AJITH BHAVANAM, PELA MURI,
KANNAMANGALAM
MAVELIKKARA.

BY ADV. T.R.RAMAN PILLAI

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,. HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR MR. LATHA THANKAPPAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO. 1638 OF 1998 IN CRL.R.P.NO. 325N OF 1998

DISMISSED.

10-4-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

ks.

K.R. UDAYABHANU, J.

CRL.R.P.NO.325 of 1998-C

DATED THIS THE 10th day of April 2007

ORDER

The revision petitioner stands convicted for the offences under Sections 279, 337 and 304(A) of the Indian Penal Code and sentenced to undergo simple imprisonment for a period of 10 months and to pay a fine of Rs.1000/- for the offence under Section 304(A) I.P.C. and in default to undergo simple imprisonment for one month. No separate sentence was awarded for the offences under Sections 279 and 337 I.P.C. The prosecution case is that on 16-3-1989 at 2.50 p.m. the accused drove a K.S.R.T.C.bus bearing Registration No.KLX-4263 in a rash and negligent manner so as to endanger to human life along with M.C.Road from South to North and at the western side of S.B.College, Changanacherry hit the scooter that came from the opposite direction that resulted in the death of the rider as well as the pillion rider. The evidence consisted of the testimony of PWs.1 to 15 and Exts.P1 to P13. Defence examined as DWs.1 to 3. PWs.2,5 and 13 have supported the prosecution

version. As can be seen from Ext.P3 plan and Ext.P2 scene mahazar the incident has taken place at 3.47 metres towards the west on the eastern tar end of the road, that is having a width of 7.4.6 metres. Evidently, the scooterist is not on the wrong side. He was proceeding towards the southern side. It is the suggestion in the cross examination and version of the defence witnesses that the scooter overtook a tempo that was loaded with firewood and suddenly appeared before the bus and the accused had no time for reflection. But I find that the deceased were not on the wrong side and hence the above contention has no merit as such. It is also the contention that the accused/revision petitioner had no culpable negligence on his part in view of the situation pointed out.

2. I find that it has also been brought out from the evidence of PW11, the Motor Vehicle Inspector and Ext.P6 inspection report of the Moor Vehicle Inspector on testing of the bus that the same had no mechanical defect. The evidence of PW2 is that the vehicle was driven by the accused in over speed. It is not disputed that the road was a straight one and hence had the

accused been careful enough, he could have avoided the accident by applying the brake. Being the driver of a public conveyance vehicle, he ought to have been careful.

3. On a consideration of the evidence adduced in the matter, I find that it stands established that the accident took place on account of the negligence on the part of the revision petitioner/accused. Culpable negligence is only a matter of inference from the circumstances of the case. I find that there are no redeeming features as such. Hence, the conviction is confirmed.

It is pointed out that the incident has taken place in March 1989. It is submitted that the accused has since retired and that he is aged 70 years right now. In the circumstances, the sentence imposed under Section 304(A)is modified to imprisonment till the rising of the court and to pay a compensation of Rs.50,000/- of which Rs.25,000/- each is to be paid to the legal heirs of the two deceased and in default to undergo simple imprisonment for six months. The revision petitioner is granted two months time to pay the amount of

compensation. The revision petitioner shall appear before the Judicial First Class Magistrate, Changanaserry on 16-6-2007 to receive sentence. The Crl.revision petition is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J
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CRL.R.P.NO.325 of 1998-C

ORDER

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10-4-2007
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